

REMARKS

Elections/Restrictions

Applicants acknowledge the Examiner's additional restriction and election of claims 17-24 and the withdrawal of claim 1-13. Applicants cancel claims 1-13 herein (claims 14-16 were canceled in the Response to the Restriction Requirement, filed May 10, 2004).

Priority

Applicants thank the Examiner for noting the inconsistency between the application data sheet and the Declaration regarding the priority claim in the present application. Applicants' intention was correctly reflected on the application data sheet. That is, Applicants' intention was to claim priority to International Application No. PCT/IB00/01093 under 35 U.S.C. §120. Applicants will file a new Declaration listing the correct priority claim as soon as possible. It is Applicants' understanding that it is not necessary to file a certified copy of the international priority document once the priority claim is corrected.

Pending Rejections

Claims 17,18, and 22-24 stand rejected under 35 U.S.C. §102(b) as being anticipated by Schwartz et al. (U.S. Patent No. 5,769,899). As stated in the Office Action, Schwartz et al. discloses a structure comprising a porous bio-absorbable matrix of hyaluronic acid, which is inherently cell-free, with an overlay of chondrocyte cells.

Claims 19-21 stand rejected under 35 U.S.C. §103(a) in view of Schwartz et al. (U.S. Patent No. 5,769,899). As stated in the Office Action, it would be obvious to a person of skill in the art to use autologous, allogenic, or xenogenic cells.

Responses to Rejections

As to rejection of claims 17, 18, and 22-24 under 35 U.S.C. §102(b), the structure disclosed in Schwartz et al. does not anticipate the present invention.

Specifically, claim 17 of the present application includes a feature that is neither disclosed nor suggested by Schwartz et al., namely

A cartilage repair structure consisting essentially of:

- (a) a cell-free matrix comprising hyaluronic acid; and
- (b) chondrocyte cells adjacent said matrix.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP §2131 (quoting *Verdegaal Bros. v. Union Oil Co. of Calif.*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). "The

identical invention must be shown in as complete detail as is contained in the . . . claim.” *Id.* (quoting *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added)).

Schwartz et al. does not disclose or suggest a cartilage repair structure consisting essentially of a hyaluronic acid matrix and chondrocytes adjacent thereto. Rather, the structure in Schwartz includes additional required elements, including, for example, a delivery unit, and a 95% void volume to establish communication between the healthy cartilage and the damaged cartilage. These additional elements of Schwartz et al. are not required in the present invention. Therefore, Schwartz cannot anticipate the invention of a cartilage repair structure consisting essentially of a cell-free matrix comprising hyaluronic acid and chondrocyte cells adjacent said matrix. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 17, 18 and 22-24 under 35 U.S.C. §102(b).


Regarding rejection of claims 19-21 under 35 U.S.C. §103 in view of Schwartz et al., Applicants respectfully contend that this rejection is now rendered moot in view of the amendments to the claims and the arguments presented above regarding the patentability of claim 17. Applicants request reconsideration and withdrawal of this rejection.

Summary

Applicants respectfully submit that the pending claims are in condition for allowance. Favorable examination of claims 17-24 on the merits is respectfully requested at this time.

Respectfully submitted,
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